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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/736,069

Filing Date: December 15, 2003

Appellant(s): KUEN ET AL.

Richard L. Bridge
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 27, 2007 appealing from the Office action mailed July 13, 2007.

(1) Real Party in Interest

The real party in interest is Kimberly-Clark Worldwide, Inc.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

U.S. Application No. 10/735,978

U.S. Application No. 10/736,443, now allowed

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,115,847	ROSCH et al	09-2000
2002/0087137	CHRISTOFFEL et al	7-2002
H1440	NEW et al	05-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-36 and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosch et al (U.S. Patent No. 6,115,847) in view of Christoffel et al (U.S. Patent Application Publication No. 2002/0087137) as applied to claims 1-11 and 13-41 above, and further in view of New et al (U.S. Patent No. H1440).

With respect to **Claims 1-9,15,16,26-28,34-37,40**: Rosch teaches an active wear trunk garment 110 having a liquid-permeable trunk cover 114 having inner surface 111 and outer surface 113 and a waste containment structure 142 comprising a liquid-impermeable backsheet 158 having a garment-facing surface, a liquid-permeable bodyside liner 156 and absorbent core 160 sandwiched therebetween. ('847, Col. 8, lines 8-16) Trunk cover 114 has front waist, rear waist and crotch regions 131,133,149 as can be seen in Figs. 1-4. Waist elastics 143,145 (collectively, waist belt) are an integral portion of cover 114 in the waist regions 131 and 133 and that garment 110 is joined to said structures. As can also be seen in Figs. 1-4, waste

containment structure 142 is disposed generally within trunk garment 110. Rosch teaches that trunk cover 114 is joined to elastic members 143,145 at the waist regions ('847, Col. 10, lines 45-49), therefore Rosch does not teach that trunk cover 114 is releasably attached at the front and rear waist regions.

Christoffel teaches a girl's swimsuit wherein an absorbent pant/bottom portion 98 is releasably attached to the upper portion/bodice 42 at the front and rear waist areas via hook and loop fasteners 92 to secure the pant portion and upper portion about the waist of the wearer and for greater ease in applying and removing said swimsuit, ('137, ¶ 0071-0074) therefore it would be obvious to one of ordinary skill in the art to utilize hook and loop fasteners to releasably attach the outer cover 114 and garment 110 taught by Rosch so as to more easily apply and remove garment 110 as taught by Christoffel.

Neither Rosch nor Christoffel teaches an absorbent assembly that is releasably and refastenably attached to a waist belt. New teaches an absorbent garment that comprises an absorbent assembly and a waist belt wherein the waist belt is releasable and refastenably attached to the assembly. New teaches that such a detachable belt provides a more contoured fit for a user and thus is less noticeable under clothing, therefore it would be obvious to one of ordinary skill in the art to modify the waistbelt taught by Rosch by substituting a detachable belt as taught by New to provide a more comfortable and discreet fit for the user. The combined teaching of Rosch and Christoffel and New would therefore yield an absorbent garment in which the absorbent assembly is releasably and refastenably attached generally at the front and back regions to a waist belt and a garment shell that is releasably and refastenably attached at the front and back waist regions to the waist belt. ('440, Abstract, Col. 9, lines 63-67)

With respect to **Claim 6**: Rosch teaches that waist elastics 143,145 are an integral portion of cover 114 in the waist regions 131 and 133 and that garment 110 is joined to said structures. As can best be seen from Figs. 1-4, the garment 110 is joined in such a way as to be joined to the inner surface of a waist belt defined by said elastics, and cover 114 is joined to the outside of said elastic members.

With respect to **Claims 10,38,39,41**: Rosch teaches that waist elastic members 143,145 are bonded in a relaxed, untensioned state to outer cover 114 and subsequently garment 110. The resulting structure is then configured for wear.

With respect to **Claim 11**: Rosch teaches an elongation for the elastic material defining the side panels of garment 110 of between 50-300%. Since the elastic members 143, 145 are joined to the garment in a relaxed state, the elongation for the entire assembly in the waist region will be at least in this range.

With respect to **Claim 12**: Rosch does not teach a particular width for the waist elastics. New teaches a releasable and refastenable waist belt for an absorbent garment having a width of 6-13 cm, or 60-130 mm, which overlaps the range set forth in claim 12. New teaches that such widths prevent twisting or wrinkling that causes red marking of the users skin, therefore it would be obvious to one of ordinary skill in the art to modify the garment 110 taught by the combined teaching of Rosch and Christoffel to have a width in the range taught by New to prevent twisting or wrinkling of the belt. ('440, Col. 10, lines 1-9)

With respect to **Claim 13**: Rosch teaches leg openings defined by seams 187,189 in cover 114. ('847, Col. 11, lines 1-5) As can best be seen in Fig. 4, garment 110 has leg openings spaced apart inwardly from leg openings defined by cover 114.

With respect to **Claim 14**: Rosch teaches leg elastics for the garment 110. Cover 114 is in the form of swimming trunks and as can best be seen in Fig.4 is designed to hang loosely about the legs of the wearer.

With respect to **Claims 17,21**: As can best be seen in Fig. 4, the crotch region of garment 110 is located inwardly of the crotch region 149 of cover 114 and not attached. Further, Rosch teaches cover 114 is configured as a pair of swimming trunks, wherein said trunks, as stated previously are intended to hang loosely about the legs of the wearer, whereas the garment contains leg elastics to fully encircle the legs of the wearer.

With respect to **Claims 18,19**: As can best be seen in Fig. 4, Rosch teaches that garment 110 has a waist opening defined by waist regions 131 and 133 correspondign to the waist regions of cover 114.

With respect to **Claim 20**: Rosch teaches pant structure 112. ('847, Col. 12, line 5)

With respect to **Claim 22**: As is seen in Fig. 5 taught by Rosch, the absorbent garment 110 is releasably and refastenably engaged along at least a portion of each of the side seams. The front and back panels of trunk 114 are not attached at side seams, therefore when the fasteners seen in Fig. 5 are released or refastened, the garment 110 is released or refastened as a whole.

With respect to **Claims 23,24**: Since Rosch teaches both non-refastenable and releasable/refastenable side seams ('847, Col. 11, lines 1-5, 14,15), though Rosch does not teach using them in combination, it would be obvious to one of ordinary skill in the art to modify said side seams so as to contain both releasable/refastenable and non-refastenable portions, for example having a non-refastenable portion located above fasteners 96 on each side seam.

With respect to **Claim 25**: Please see the rejection of claim 1 in addition to the following: Rosch teaches that cover 114 has front panel 115 and back panel 121 having side edges 117 and 119 (front) and 123 and 125 (back). ('847, Col. 10, lines 57-65)

With respect to **Claims 29-31**: Rosch teaches pant structure 112 having left and right side panels 126, 128 respectively that extend from the front waist region 120 to the rear waist region 122. ('847, Col. 12, lines 4-12) Panels 126,128 are ultrasonically bonded and have non-refastenable seams so as to allow fastening of a front side panel to a corresponding back side panel, thus defining leg openings, as can be seen in Figs. 5,6. ('847, Col. 12, lines 18-21) As can also be seen in Figs. 5 and 6 pant structure 112 has front and back panel areas in addition to the side panels. In another embodiment shown in Fig. 5, Rosch teaches tape fasteners that are refastenable, thus Rosch teaches that panels 126,128 could also be releasably and refastenably attached.

With respect to **Claim 32,33**: Since Rosch teaches that the side panels are elastomeric and are capable of stretching to between 10-500% of their original length ('847, Col. 8, lines 55-60), the side panels are capable of creating an overlap in the range set forth by applicant in claim 33

(thus also falling within the range set forth in claim 32), in both the cases of non-refastenable and releasable/refastenable seams.

(10) Response to Argument

Applicant's arguments filed November 27, 2007 have been fully considered but they are not persuasive.

With respect to arguments regarding the rejection of claims 1 and 3-35: Applicant argues (beginning on the bottom of page 6) that Rosch teaches a pant structure 12 and skirt cover 14 that are permanently joined at the waist of the garment and thus does not meet the limitation of claim 1 regarding a garment shell that is refastenably attached to an absorbent garment. This is not persuasive because Rosch teaches an alternate embodiment in Col. 16, lines 58-67 in which only one end of the waste containment structure (the absorbent assembly) is elastically connected to the instant cover. Thus Rosch is teaching an alternate embodiment in which one end of the absorbent assembly is releasably and refastenably connected, as the only alternative to a non-refastenably connected end is a refastenably connected end (which is inherently and necessarily also releasably connected), since both ends must be somehow connected to the cover as taught by Rosch. Nevertheless, the prior art of Christoffel was introduced as a secondary reference to remedy the deficiency fully, i.e. teach two releasably and refastenably connected ends of an absorbent assembly rather than one as taught by Rosch. Examiner will now address applicant's arguments regarding the prior art of Christoffel even though applicant instead argues the application of the New reference next, as the New reference is the tertiary reference, not the secondary reference and thus the arguments are in improper form.

With respect to arguments regarding the Christoffel reference and the combination of the Rosch and Christoffel reference, beginning on page 9 of the appeal brief: Applicant argues that

each embodiment of Christoffel comprises a chassis 22 that is permanently secured to a bodice, i.e. it is non-refastenably secured, and thus Christoffel does not remedy the deficiency of Rosch. This is not persuasive because Christoffel teaches in paragraphs 0072 an embodiment wherein the chassis 22 is a pant-like absorbent product attached to the bodice, clearly implying a two-piece construction, otherwise the chassis 22 could not possibly be considered or described as pant-like in any way. Further, Christoffel teaches in paragraph 0057 that the "chassis 22 and the bodice 42 can either be two separate entities bonded together or one continuous coverstock."

The underlined portion clearly applies to the embodiment of Fig. 20 described in paragraph 0072. Applicant further argues that the bodice 42 of Christoffel is not absorbent. This is immaterial, as claim 1 does not require that the garment shell be absorbent, and Rosch, the primary reference, has already satisfied the limitation of a garment shell. As to applicant's argument that Christoffel does not teach a two piece system wherein the bodice is releasably attached to the chassis 22, the argument regarding a two-piece system has been addressed and Christoffel clearly teaches that the bodice 42 and the chassis 22 are bonded at their respective front and back waist regions using attachment means "known in the art", which one of ordinary skill in the art would certainly interpret as including hook and loop fasteners. ('137, ¶0074) This response is considered herein to fully address the balance of applicant's arguments regarding the prior art of Christoffel as well as arguments regarding the combination of Rosch and Christoffel. Rosch teaches an embodiment in which one end of the instant absorbent garment is necessarily refastenably connected to the garment shell, and Christoffel teaches a two-piece garment comprising a pant-like absorbent garment substantially identical in structure to that of Rosch that is bonded to a garment shell in the form of a bodice 42 by hook and loop fasteners at its waist region, in the same manner as the one end of the absorbent garment of Rosch, and Christoffel teaches that this releasably fastenable fastener system 92 comprising

the hook and loop fasteners at the waist region allows easy removal of the garment to replace the absorbent portion of the pant. Thus there is certainly motivation to combine the prior art of Rosch and Christoffel.

Examiner will briefly address applicant's arguments regarding the prior art of New, though they were improperly presented by applicant. Applicant argues that the prior art of New teaches a detachable belt with fasteners to reattach the belt to an absorbent assembly, not an absorbent garment. This is not persuasive because New teaches in Fig. 6 that the belt of the invention is attached to an absorbent article substantially identical in structure to both the pant of Rosch and the pant of Christoffel. Since such a belt could be used with the prior art articles of Rosch and Christoffel and New teaches that the belt provides a more contoured fit for the user, as well as a more discreet fit, which would be desirable for a user wearing an article such as that of Rosch which comprises at least two separate layers of material. Thus, again, there is clearly motivation to combine the prior art article of the combined teaching of Rosch and Christoffel with the prior art article of New to provide an absorbent garment having a releasably and refastenably attachable waist belt for a more contoured and discreet fit and a garment shell releasably and refastenably attached to the waist belt for easy access to the absorbent assembly.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melanie J Hand/

Examiner, Art Unit 3761

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